

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Sid Brooks

In re:)	
)	
STACY JANINE FINCH,)	Bankruptcy Case No.
)	06-14016-SBB
Debtor.)	Chapter 7
)	
Address: 3001 Fox Street # 225)	
Denver, CO 80202)	
)	
Last four digits of SS#: 7570)	
)	
Employer's Tax Identification)	
No. [if any]: N/A)	

**ORDER DECLINING TO APPROVE STIPULATION FOR ASSUMPTION OF THE
LEASE AGREEMENT BETWEEN DEBTOR AND JAGUAR CREDIT**

THIS MATTER comes before the Court on the Stipulation for Assumption of the Lease Agreement Between Debtor and Jaguar Credit filed on September 12, 2006 (Docket # 11). No motion has been filed, but a proposed order approving the stipulation has been submitted to the Court. The Court, having reviewed the Stipulation and the within case file,

DOES FIND as follows:

1. On June 29, 2006, Stacy Janine Finch ("Debtor") filed for relief under Chapter 7 of the United States Bankruptcy Code.
2. The Debtor indicated in her Chapter 7 Individual Statement of Intention filed with the petition (Docket # 3) that she intended to reaffirm a debt with Jaguar Credit Department. In her Schedules B and D and her Chapter 7 Individual Statement of Intention, she indicates that the debt is secured by a 2003 Jaguar X Type and that the 2003 Jaguar X Type is leased.
3. The Debtor's Schedules I and J would further reflect that approximately one-third of Debtor's net income is used to pay for the use of the 2003 Jaguar X Type.
4. On August 21, 2006, a Stipulation for Assumption of the Lease Agreement Between Debtor and Jaguar Credit was filed with the Court. The relief requested is not by motion and, therefore, could be denied on that basis alone.
5. Further, the Stipulation for Assumption of the Lease Agreement Between Debtor and Jaguar Credit provides that the lease will be assumed under 11 U.S.C. §365(p) and that the

Debtor will “waive the affect [sic], if any, the discharge under 11 U.S.C. § 524(a) has as to the assumed Lease Agreement.”

6. 11 U.S.C. § 365(p)(2) provides, in part:

(A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

The language of section 365(p) does not appear to require or contemplate judicial approval of the agreement of the parties by way of an Order authorizing same or otherwise. Moreover, section 365(p)(2) does not appear to necessarily lead to waiver of or exception to the discharge of a debt by way of the assumption.

7. The effect of a bankruptcy discharge on pre-petition obligations is primarily controlled by 11 U.S.C. § 524. Section 365(p)(2) of Title 11 makes no reference to Section 524; Section 524 makes no reference, exception or no special provisions for Section 365(p)(2).

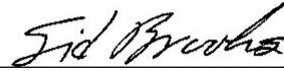
8. In effect, the legal consequence of the relief requested by way of the Stipulation for Assumption of the Lease Agreement Between Debtor and Jaguar Credit before the Court is that it is, really, a reaffirmation agreement subject to the requirements of 11 U.S.C. § 524(c). The Stipulation is not properly before the Court under 11 U.S.C. § 524. Moreover, this Court cannot conclude, based upon the Debtor’s Schedules that entering into this agreement is *not* an undue hardship.¹

IT IS THEREFORE ORDERED that the Stipulation for Assumption of the Lease Agreement Between Debtor and Jaguar Credit is NOT APPROVED.

¹ Indeed, reaffirmation or assumption of a 2003 Jaguar lease which absorbs up to one-third of a debtor’s net income could never pass the standards and protections afforded to debtors under Section 524.

Dated: October 2, 2006

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Sid Brooks", written over a horizontal line.

Sidney B. Brooks,
United States Bankruptcy Judge